

THIS OPINION WAS NOT WRITTEN FOR PUBLICATION

The opinion in support of the decision being entered today (1) was not written for publication in a law journal and (2) is not binding precedent of the Board.

Paper No. 33

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte VOLKER SCHREPF

Appeal No. 1999-0930
Application 08/410,931¹

ON BRIEF

Before CALVERT, COHEN and McQUADE, Administrative Patent Judges.

COHEN, Administrative Patent Judge.

DECISION ON APPEAL

This is an appeal from the final rejection of claims 1 through 3 and 5 through 16. These claims constitute all of the claims remaining in the application.

¹ Application for patent filed March 27, 1995. According to appellant, this Application is a continuation of Application 08/055,675, filed April 30, 1993, now abandoned.

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Appellant's invention pertains to a system for applying fluid cosmetic material, to an eyeliner applicator system, and to a cosmetic material applicator for use with a container holding a body of fluid cosmetic material. An understanding of the invention can be derived from a reading of exemplary claims 1, 7, and 12, copies of which appear in the *Appendix* to the main brief (Paper No. 29).

As evidence of obviousness, the examiner has applied the documents listed below:

Bell	566,558	Aug. 25,
1896		
Buehrer	1,542,333	Jun. 16, 1925
Kitamura et al.	4,764,046	Aug. 16, 1988
(Kitamura)		
Gueret	4,841,996	Jun. 27, 1989
Yokosuka et al.	4,913,175	Apr. 3, 1990
(Yokosuka)		

The following rejections are before us for review.

Claims 1 through 3, 5, 6, and 12 through 16 stand rejected under 35 U.S.C. § 103 as being unpatentable over Gueret in view of Buehrer, Bell, and Kitamura.

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Claims 7 through 11 stand rejected under 35 U.S.C. § 103 as being unpatentable over Gueret in view of Buehrer, Bell, and Kitamura, as applied above, further in view of Yokosuka.

The full text of the examiner's rejections and response to the argument presented by appellant appears in the answer (Paper No. 30), while the complete statement of appellant's argument can be found in the main and reply briefs (Paper Nos. 29 and 31).

OPINION

In reaching our conclusion on the obviousness issues raised in this appeal, this panel of the board has carefully considered appellant's specification and claims, the applied patents,² and

² In our evaluation of the applied references, we have considered all of the disclosure of each document for what it would have fairly taught one of ordinary skill in the art. See In re Boe, 355 F.2d 961, 965, 148 USPQ 507, 510 (CCPA 1966). Additionally, this panel of the board has taken into account not only the specific teachings, but also the inferences which one skilled in the art would reasonably have

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the respective viewpoints of appellant and the examiner. As a consequence of our review, we make the determinations which follow.

We reverse the respective rejections of the claims on appeal under 35 U.S.C. § 103.

Initially, we make the following findings relative to the examiner's evidence of obviousness.

The Gueret document discloses an applicator device (Fig. 1) that includes a brush comprising a tuft of hairs 8 carried by a stem 9 and a bottle 2 containing a liquid product L. The stem includes a hollow portion 14 defining a chamber or reservoir R which is capable of replenishment by capillarity when the hairs 8 of the brush are immersed in the liquid product L. The hollow portion 14 comprises capillary striations 18 (Fig. 2) oriented parallel to the axis of the

been expected to draw from the disclosure. See In re Preda, 401 F.2d 825, 826, 159 USPQ 342, 344 (CCPA 1968).

stem and promotes rising and retention of the liquid product in the hollow portion 14 (column 4, lines 35 through 39). The liquid product L passes along the surface of the tuft, not between the hairs (column 8, lines 3 through 8). With this arrangement, it is possible to apply nail varnish over a whole hand without having to reimmerse the hairs 8 of the brush 3 in the liquid product of the bottle 2 (column 5, lines 10 through 14). The Buehrer reference (Fig. 2) teaches a fountain marker brush comprising a body 1 filled with ink including a lower nipple 9 and nozzle 11. The nozzle has a central threaded hole 12, with a marking point 2 of the brush screwed therein. The marking point can be an interchangeable point made of felt (preferred), soft or stiff hair, sponge, rolled cloth, or any other firm flexible capillary material (page 1, lines 82 through 88). Viewing Figs. 2 and 3, the interior threaded hole of the nozzle includes a series of small ink feeding channels 13 which lead from the space above the nozzle and "terminate just inside the extreme end of the nozzle as shown" (page 1, lines 96 through 101). The upper end of the marking point is completely surrounded by an auxiliary ink reservoir

or chamber 14 which is entirely separated from a main ink reservoir 15 within the body by a seated valve 7 (page 1, lines 102 through 108). No air vent exists at the marking point 2 of the brush, since the feeding grooves 13 terminate just before the end of the nozzle 11 (page 2, lines 34 through 37). The patent to Bell teaches (Figs. 2, 6, and 7) a marking instrument wherein depressions b' in a brush guide admit free limited flow of a liquid to supply a brush E on its outer side. The Kitamura patent addresses a manicure liquid applying device (Figs. 1 and 2) wherein a plurality of grooves 4c facilitate the guiding of manicure liquid to the leading edge of an applying portion 5 (column 4, lines 4 through 7). The applying portion is constituted by a brush member folded in two and then fixed by a stopper 6 (column 3, lines 64 through 66). The Yokosuka reference teaches a liquid applying tool for manicure liquids or eye liner liquids.

It is apparent to us that one having ordinary skill in the art would have fairly understood from the Gueret teaching that the capillary striations 18 in the hollow portion or

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chamber 14 extend to the end point of the lower end 22 of the stem. As we see it, our assessment in this matter is clearly supported by the patentee's statements regarding the operation of the applicator, i.e., the striations 18 promote the rising and retention of

liquid product in the hollow portion (column 4, lines 35 through 39) and the liquid product "passes axially along the outer surface of the tuft" (column 8, lines 3 through 8).

Like the examiner, we certainly appreciate the relevance of the Gueret and Buehrer teachings, in particular, to the claimed invention. Nevertheless, this panel of the board concludes that, absent hindsight, the entirety of the evidence of obviousness relied upon, by itself, simply would not have been suggestive of altering the applicator device of Gueret to yield the subject matter of independent claims 1, 17, and 12. Each of these specified claims requires an applicator having a reservoir "spaced from" a distal end of a stem, with a passage in the stem communicating between the reservoir and the distal end, and with the passage defining a path for flow between the distal end and the reservoir externally of the body portion of a tip inserted in the passage. The overall applicator of Gueret is not configured with a reservoir spaced from the distal end of stem 9. Instead, as can readily be discerned from a review of Fig. 1 of Gueret, the hollow portion of the

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stem 9 is, itself, the reservoir R which extends, along with its capillary striations, to the distal end of the stem, as earlier explained. Thus, in our opinion, it would have taken impermissible hindsight and specifically chosen prior art features to alter the applicator device of Gueret to address the content of appellant's claims. It is for this reason that the rejections are reversed.

In summary, this panel of the board has:

reversed the rejection of claims 1 through 3, 5, 6, and 12 through 16 under 35 U.S.C. § 103 as being unpatentable over Gueret in view of Buehrer, Bell, and Kitamura; and

reversed the rejection of claims 7 through 11 under 35 U.S.C. § 103 as being unpatentable over Gueret in view of Buehrer, Bell, and Kitamura, and Yokosuka.

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The decision of the examiner is reversed.

REVERSED

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IAN A. CALVERT)	
Administrative Patent Judge)	
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)	BOARD OF PATENT
IRWIN CHARLES COHEN))
Administrative Patent Judge)	APPEALS AND
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)	INTERFERENCES
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JOHN P. McQUADE)	
Administrative Patent Judge)	

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